

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION
APPELLANT PANEL

Case No. 2025-000352

Sharonda Love,

Claimant,
Appellant,

v.

Fresenius Medical Care
Holding,

Employer,

AND,

American CASUALTY Co.
Reading Pennsylvania,

Carrier,
Respondent

[INITIAL] BRIEF OF APPELLANT

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE APPELLANT PANEL OF SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION ERR IN FINDING OF FACT 7 WHEN IT FOUND ETHOS WAS NOT AN INSURANCE CARRIER?
- II. DID THE APPELLATE PANEL OF THE SOUTH CAROLINA WORKERS' COMMISSION ERR IN FINDING THAT SHARONDS LOVE WAS NOT ENTITLED TO LIFETIME MEDICAL BENEFITS?
- III. DID THE APPELLATE PANEL OF THE SOUTH CAROLINA WORKER'S COMPENSATION COMMISSION ERR IN NOT APPLYING S.C. CODE SECTION 42-15-60 (B)(3)(A)?

STATEMENT OF THE CASE

Sharonda Love injured her back on April 21, 2006, and her claim was resolved by consent order dated May 16, 2013. The order provided for lifetime medical treatment for Sharond's injury and provided the avenue for defendants to be relieved of providing lifetime medical by providing an (Medicare Set Aside Trust Agreement) MSA. Defendants did not avail themselves of this option and provided medical treatment for Sharonda until this action was instituted. By order, the South Carolina Workers' Compensation Commission denied Ms. Love's right to lifetime medical.

STANDARD OF REVIEW

On appeal from an appellate panel of the Workers' Compensation Commission, this court can reverse or modify the decision if it is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record. The **Claimant** has the burden of proving facts that will bring the injury within the Workers' Compensation law; such award must not be based on surmise, conjecture or speculation. In a Workers' Compensation case, the appellate panel is the ultimate fact-finder. Workers' Compensation law is to be liberally construed in favor of coverage in order to serve the beneficent purpose of the Workers' Compensation Act; only exceptions and restrictions on coverage are to be strictly construed. [Nicholson v. S.C. Dep't of Soc. Serv., 411 S.C. 381, 759 S.E. 2d 1 (SC 2015)]

ARGUMENTS

1. DID THE HEARING COMMISSIONER ERR IN FINDING OF FACT 7 WHEN SHE FOUND THAT ETHOS WAS NOT AN INSURANCE CARRIER?

Sharonda Love testified she left messages for the insurance adjuster and corresponded with EthosRisk (Hearing Transcript Page 10 Line 21-24), and the commissioner found as a fact that EthosRisk was not the insurance carrier or an agent of the carrier. She did not reference any testimony or documentation other than Ms. Love's testimony. Sharonda did present emails as proof of her position about correspondence with defendants, Administrative Procedures Supplement pages 70-78(FoF 6). The hearing commissioner found as a fact that EthosRisk was not an agent of the defendants without a shred of testimony or documentation that contradicted Sharonda's testimony. The hearing commissioner did not find that Sharonda was not credible or believable, yet she ignored her testimony.

That Sharonda needs medical treatment is not contested. That Sharonda Love has a work-related injury is not contested. That Sharonda Love has retained hardware in her back is also not contested. The purpose of the South Carolina Worker's Compensation Commission is to protect injured workers like Sharonda. The hearing commissioner did not protect Sharonda and did not reference any evidence to support her decision.

Sharonda submitted emails and a copy of a voice mail that support her testimony about speaking to the adjuster personally and about a man who came and left a card requesting she call (APA Pages 70-78). Sharonda got hurt at work and still needs medical treatment. We are not arguing about compensability; we are arguing about what is right, and we are arguing about the purpose of the Act to help injured workers. How are the purposes of the Act furthered by denying this woman treatment who had been treating for sixteen years? Clearly, they are not. Sharonda got hurt and doesn't get treatment in contravention of the purposes of the Workers' Compensation Act.

2. DID THE HEARING COMMISSIONER ERR IN FINDING THAT SHARONA WAS NOT ENTITLED TO LIFETIME MEDICAL BENEFITS?

The original of the single Commissioner dated November 13, 2024, in the third paragraph states, "The parties reserve the right to establish a Medicare Set-Aside Trust (MSA) to resolve lifetime causally related medical care...." The order clearly establishes the method for respondents to shed lifetime medical benefits by establishing an MSA which they never did. Respondents had the ability at any time to obtain an MSA but did not do so. It continued providing medical treatment for Sharonda for sixteen years without interruption. Were there other periods Sharonda went without treatment for over one year? The record is silent. Like clockwork, defendants provided medical treatment for Sharonda and never once mentioned an MSA.

The Commission ignored this provision of the original order. The Appellate Panel did state Sharonda could have done differently.(Order of Appellate Panel Finding of Fact 8). The hearing commissioner did ignore Sharonda's testimony and the Supplemental APA submissions.

When an order details instructions about lifetime medical treatment, the order must be followed. It was not followed, and this court cannot condone ripping away lifetime medical benefits in the face of this sixteen-year-old unappealed order. Lifetime medical does not mean sixteen years of medical, it means what it says, lifetime medical care. By denying Sharonda treatment, this commission will be condoning delay and deny tactics of this insurance carrier. Sharonda called and called, (Hearing Transcript Page ... Line ...

For the defendants, sent someone to her home, verified by the voicemail. (APA Exhibit 4). Defendants even verified in an email the procedure: Sharonda may call the adjuster directly, cutting out the lawyers. (APA Exhibit 3). Denying treatment for Sharonda Love is unequitable and plain and simply wrong.

3. DID THE HEARING COMMISSIONER ERR IN NOT APPLYING SOUTH CAROLINA CODE SECTION 42-15-60(B)(3)(A)?

This code section allows a carrier to suspend medical treatment after one year unless the "commission order provides otherwise." The order, as above stated, set out exactly how Sharonda's bargained-for lifetime medical benefits could be suspended by providing an MSA. Clearly, a Medicare Set Aside Trust was never offered, but continued medical treatment was. From the defendant's email allowing direct contact between Sharonda and the insurance company, continuing medical treatment was clearly contemplated. APA Exhibit 3. The order provides otherwise, and the hearing commissioner was not free to ignore it.

CONCLUSION

This case cries out for reversal, and Sharonda Love requests that this court reverse the Appellate Panel's order and reinstate her lifetime medical.

Respectfully submitted,

July 16, 2025

/s/ David V. Benson
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Carrier,
Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Nicolas L. Haigler by depositing a copy of it in the United States Mail, postage prepaid, on July 21, 2025, Post Office Box 11449, Columbia, South Carolina 29211. Also served, South Carolina Worker s Commission at 1333 Main St. Suite 180, Columbia, SC 29201 on July 21, 2025.

July 21, 2025

s/ David V. Benson

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
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P.O. Box 11629
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RE: Sharonda Love v. Fresenius Medical Care Holding, Employer, American Casualty Co of Rdg
PA, Carrier. WCC File No.: 0606817

Dear Ms. Kitchings:

Enclosed are our Initial Brief, Designation of Matter, and our certificate of service on Nick Hagler.
Please, let me know if you need anything else

Sincerely,

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